Supreme Court, U.S.
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No. 99-794

IN THE
SUPREME COURT OF THE UNITED STATES

DARRYL J. ROBERTS,
Petitioner,

v.

BEULAH B. WOOTON, ADMINISTRATRIX
OF THE ESTATE OF ROBERT O. WOOTON,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

RESPONDENT'S BRIEF IN OPPOSITION

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ABSENCE OF JURISDICTION IN THIS COURT

This Court lacks jurisdiction to grant the Writ. The decision of the West Virginia Supreme Court of Appeals which is the subject of the Petition is a non-final order remanding a case for factual development on an issue of state law. Jurisdiction is improperly asserted, therefore, under 28 U.S.C.§ 1257 and Rule 14(i) of the Rules of this Court. Sup.Ct.R.14(i); Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 502-05 (1975). Petitioner never raised any federal Constitutional Claim in the West Virginia Supreme Court of Appeals, and its ruling was not a final one. Furthermore, there is no substantial federal question presented.

STATEMENT OF THE CASE

In this civil action, Respondent asserts that stock belonging to her husband rightfully belongs to her. After Respondent's husband's death, his stock was wrongfully converted by Chester Roberts and Associated Cemetery Estates, subsequently transferred to the Petitioner Darryl Roberts, transformed into other assets upon the sale of the corporation, and then finally transferred by Petitioner to two trusts, the Darryl Roberts Trust and the Ann Roberts Trust (both of which are subject to Petitioner's control) into which the assets can now be traced. The Opinion below reviewed a decision by a trial court, the Circuit Court of Raleigh County, West Virginia, directing judgment as a matter of law against the Respondent on the ground that the statute of limitations had run on her claims. The West Virginia Supreme Court of Appeals, in a *per curiam* opinion, found that under the facts presented, plaintiff was entitled to a jury determination of when the statute of limitations accrued. The Court's rationale focused on the "discovery rule", a rule of state law discussed below:

[I]n the case *sub judice,* we must determine whether the evidence presented by the plaintiff was sufficient to create a question of fact for the jury as to whether she was entitled to the benefit of the discovery rule. In other words, did the plaintiff offer evidence from which a reasonable jury could conclude that she did not know or had no reason to know that her husband's stock had been transferred prior to 1994.

After reviewing the record, we conclude that the plaintiff did offer sufficient evidence during the presentation of her case to create a question of fact for the jury regarding whether her claim was barred by the statute of limitations. We disagree with the circuit court's conclusion that because the plaintiff did not receive dividends after her husband's death, she had reason to know that something had happened to the stock. The plaintiff presented evidence indicating that she believed the stock was being paid for with the dividends and did not expect to collect them. More importantly, the plaintiff presented evidence that she received offers from the appellees to purchase her husband's stock through the 1990s. The plaintiff maintains that those offers gave her reason to believe that she still owned the stock. She contends that once the appellees claimed ownership of the stock in 1994, she timely filed suit. Considering these facts in the light most favorable to the plaintiff, we believe that the jury should have been given the opportunity to consider this evidence and

> determine whether the plaintiff's claims are barred by the statute of limitations. Pet. App. B at 15a-16a.

At no point in the appeal did the Petitioner assert that his rights under the Due Process Clause were at issue. Indeed, the Petition makes no mention of when the federal questions sought to be reviewed were raised, the manner of raising them and the way they were passed on in the courts below as required by Rule 14(i) of the Rules of the United States Supreme Court.

REASONS FOR DENYING THE WRIT

The obvious fatal flaw in the Petition is that it fails to support jurisdiction under 28 U.S.C.§ 1257 because the decision appealed from is not a "final judgment or decree". As this Court stated in Jefferson v. City of Tarrant, Ala., 522 U.S. 75 (1997).

> From the earliest days of our judiciary, Congress has vested in this Court authority to review federal question decisions made by state courts. For just as long, Congress has limited that power to cases in which the State's judgment is final. See Judiciary Act of 1789, § 25, 1 Stat. 85. The current statute regulating our jurisdiction to review state-court decisions provides:
>
> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United

> States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."28 U.S.C. § 1257(a).
>
> This provision establishes a firm final judgment rule. To be reviewable by this Court, a state-court judgment must be final "in two senses: it must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. It must be the final word of a final court." Market Street R. Co. v. Railroad Comm'n of Cal., 324 U.S. 548, 551, 65 S.Ct. 770, 773, 89 L.Ed. 1171 (1945). As we have recognized, the finality rule "is not one of those technicalities to be easily scorned. It is an important factor in the smooth working of our federal system." Radio Station WOW, Inc. v. Johnson, 326 U.S. 120, 124, 65 S.Ct. 1475, 1478, 89 L.Ed. 569 (1945).

Jefferson, 522 U.S. at 80-81.

The order from the West Virginia Supreme Court of Appeals remanding the case for a new trial is not a "final judgment". See Wright, Miller and Cooper, Federal Practice

and Procedure: Jurisdiction 2d. § 4009, p. 159. Because Petitioner will be free to assert, and may prevail on his statute of limitations defense on remand to the Circuit Court of Raleigh County, he cannot present a justiciable issue to this Court.

A second fatal flaw in the Petition is that the supposed federal constitutional issue was not presented to the West Virginia Supreme Court of Appeals. Not only was no such question presented in Petitioner's "Response of Darryl Roberts to Brief of Appellant"; Petitioner failed to cite a single case from the federal system. See Resp. App. 1

Finally, the due process claim asserted is patently meritless. Petitioner claims that the West Virginia Supreme Court of Appeals violated due process by creating a new exception to a legislatively created statute of limitations. This is untrue. The statute of limitations relied upon does not address when the cause of action accrues. See W. Va. Code § 55-1-12. It is therefore proper for the court and jury to apply a well established, judicially created rule of state law that controls this issue: "Generally a cause of action accrues (i.e., the statute of limitations begins to run) when a tort occurs; under the 'discovery rule,' the statute of limitations is tolled until a claimant knows or by reasonable diligence should know of the claim.' Syllabus Point 1,." Syllabus Point 1, Cart v. Marcum, 188 W.Va. 241, 423 S.E.2d 644 (1992)." Syllabus Point 2, Gaither v. City Hosp., Inc., 487 S.E.2d 901 (W. Va. 1997). The statute of limitations established by the state legislature contravenes neither this language nor its application in this case.

The Petitioner apparently urges that he was deprived of due process because there was no evidence that Respondent was prevented from discovering her claim. Although this

argument would not rise to a federal claim in any event, Petitioner has misstated both the state law and the facts. In its opinion in the instant matter, the Supreme Court of Appeals noted that "there are some instances where the discovery rule should not be applied because the nature of the wrong is such that a plaintiff could not reasonably claim ignorance of the existence of the cause of action", Pet. App. B at 12a, and that in those instances the plaintiff must make a strong showing that the defendant did something to prevent the plaintiff from knowing of the claim. Id.; accord Gaither v. City Hosp., Inc., 487 S.E.2d at 907. But the court did not hold Respondent's case to be one of those "instances" and accordingly did not decide the matter under this narrower formulation; rather, it held a jury should decide whether the general discovery rule saved Respondent's claim: i.e., whether Respondent knew or reasonably should have known of her claim at an earlier date. Contrary to the assertions in the Petition, Respondent had, in the courts below, presented facts to show why Respondent did not know that the stock had been taken from her husband and transferred to Petitioner and the West Virginia Supreme Court of Appeals so found. Pet. App. B at 15a.

Finally, Petitioner's due process rights have not been denied because he will have an opportunity to present his statute of limitations defense to the jury in any event. No more than this is required: that defendant have a meaningful opportunity to be heard before a deprivation of property takes place. See, e.g., Logan v. Zimmerman Brush Co., 455 U.S. 420, 433-34 (1982).

CONCLUSION

This case is currently pending, upon issues of purely state law, in the courts of the State of West Virginia. Respondent respectfully submits that this Court has no

jurisdiction over such matters. Accordingly, the Petition for the Writ of Certiorari should be denied.

/s/_____
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APPENDIX 1

EXCERPT FROM THE RESPONSE
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